

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H205357

MELANIE P. NICHOLAS-MADDEN, EMPLOYEE	CLAIMANT
LENNOX INDUSTRIES, INC., EMPLOYER	RESPONDENT
INDEMNITY INS. CO. OF NORTH AMERICA/ CORVEL HEALTHCARE CORP., CARRIER/TPA	RESPONDENT

OPINION FILED 16 NOVEMBER 2023

Hearing before Administrative Law Judge JayO. Howe in Little Rock, Pulaski County, Arkansas, on 15 November 2023.

Claimant, Melanie Nicholas-Madden, *pro se*, failed to appear.

Mr. Eric Newkirk, Attorney-at-Law of Little Rock, Arkansas, appeared on behalf of the respondents.

STATEMENT OF THE CASE

A hearing was held in the above-styled matter on 15 November 2023, in Little Rock, Arkansas, on the respondents' Motion to Dismiss for failure to prosecute pursuant to Arkansas Code Annotated § 11-9-702 and/or Rule 099.13 of the Arkansas Workers' Compensation Act. The Commission's file was incorporated by reference at the beginning of the hearing.

The claim involves an alleged workplace injury occurring on 12 July 2022. A Form AR-C was filed by the claimant on 27 July 2022, claiming that she was exposed to a large amount of insulation and fiber glass particles and experienced sinus issues, respiratory complications, and nausea as a result. The respondents filed a Form AR-2 on 4 October 2022, stating that the claim was not compensable. Another Form AR-2 appears in the file dated 19 October 2022 stating the same.

The file was assigned to the Legal Advisor Division for an attempt at mediation. After some correspondence a mediation date was set and the parties attempted to mediate a resolution on 20 December 2022. An Agreement form dated that same day indicates that after meeting at the Arkansas County Courthouse, a resolution was not reached on the merits of the claim. A Form AR-R, Report of Mediation, dated 21 December 2022 notes the same. A memorandum from the Legal Advisor Division indicates that the file was returned to the Clerk's office on 21 December 2022. The file evidences no further action until the filing of the respondents' 14 August 2023, file-marked Motion for a Dismissal Without Prejudice.

The claimant did not respond to the respondents' Motion or the Commission's letters providing notice of the Motion and notice of the hearing. She did not appear before the Commission for the scheduled hearing on the respondents' Motion to argue against the requested dismissal *without prejudice*.

Indeed, no evidence of a request for a hearing on a justiciable issue appears in the file in the time relevant to the respondents' Motion. Based on the record, argument by counsel, and evidence before me, I am compelled to find that the Motion to Dismiss should be granted due to the claimant's lack of prosecution and the matter should be dismissed without prejudice.

ORDER

Pursuant to the above, there is no alternative but to find that the Motion to Dismiss should be granted and this matter should be dismissed without prejudice at this time.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE